



**PATENT APPLICATION**  
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*#17*  
*Appeal Brief*  
*7-31-03*  
*YCW*

Applicant	: Louis BENOIT	)
		) Group A.U. 3618
Appln. No.	: 09/941,643	)
		) Examiner Hau PHAN
Filed	: August 30, 2001	)
		) Confirmation No. 7042
For	: CHASSIS FOR AN IN-LINE SKATE, AND AN	)
	IN-LINE SKATE INCLUDING SUCH CHASSIS	)

**APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Sir:

This appeal is from the examiner's final rejection of November 18, 2002, a Notice of Appeal having been filed on April 18, 2003. A request for extension of time under 37 CFR §1.136(a) for one month is being filed concurrently herewith, extending the due date for filing this appeal brief from June 18, 2003 to July 18, 2003.

**A. REAL PARTY IN INTEREST**

The real party in interest for the invention is SALOMON S.A., of Metz-Tessy, France.

**B. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **C. STATUS OF CLAIMS**

Claims 1-18 and 20-30 are pending.

Claims 7-12 and 28-30 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Myers et al. (U.S. Patent No. 5,735,536, hereinafter "Myers") in view of MacDonnell (U.S. Patent No. 1,977,587, hereinafter "MacDonnell"). See Section 4 of the final Office action, beginning near the middle of page 2.

Claims 1-6, 13-18, and 20-27 are allowed.

### **D. STATUS OF AMENDMENTS**

An amendment was filed on May 29, 2003, subsequent to the mailing of the final rejection.

As indicated in the Advisory Action dated June 19, 2003, the amendment has been entered for purposes of appeal. The claims appended to this appeal brief reflect entry of the amendment of May 29, 2003.

### **E. SUMMARY OF THE INVENTION**

The invention defined in the claims on appeal is directed to an "in-line skate." More particularly, the invention is directed to such in-line skate in which a plurality of wheels is adapted to be positioned between opposed flanges of the frame of the skate, wherein the frame is strengthened by virtue of one or more portions of the flange(s) having been pressed to form an area of non-planarity in the flange(s).

To highlight certain advantages of the invention, a short summary of prior art is presented below, followed by a summary of the invention.

## **1. Summary of Prior Art**

Skate frames are known to be made by means of bending sheet metal into a U-shaped form, although increasing the strength of such frames requires the manufacturer to increase the thickness of the metal sheet from which the frame is made. Although strength can be increased thereby, the weight of the frame also increases. (Specification, page 2, line 22, to page 3, line 4.)

Another conventional technique relies upon the skate frame to be molded from plastic or metallic materials. Although molding offers the advantage of adaptability to produce various forms, this constructional technique suffers from disadvantages, such as the relatively high cost of providing the molds, a relatively limited selection of materials that can be used, and a relatively low strength, even when metal is used. A significant disadvantage in manufacturing skate frames by molding is an inability to produce frames that require precision in certain respects, thereby requiring additional machining, for example. (Specification, page 3, lines 5-14.)

An additional technique for manufacturing skate frames is that of extrusion, whereby the frame is produced from an extruded metallic bar having a uniform profile. This constructional technique typically requires a significant amount of machining to remove material according to the shape and details desired. This constructional technique produces a relatively strong frame, but it is time-intensive in the required customized machining for any particular shape desired. Further, this constructional technique does lend itself to adaptability in various shapes. (Specification, page 3, lines 19-25.)

## **2. Summary of the Invention**

The inventive in-line skate specified in the claims on appeal represents an advance over prior art that includes a frame (*i.e.*, "chassis") constructed in accordance with conventional

techniques mentioned in the background section of the specification. The advance is represented by improvements, at a relatively low manufacturing cost, regarding an increased mechanical strength, flexibility, low-weight, and adaptability. (Specification, page 4, lines 2-7.)

The in-line skate of the invention includes a pair of spaced-apart flanges (such as flanges 2, 2 shown in Figs. 1-3, or flanges 12, 12 shown in Figs. 4-6, for example, or flanges 22, 22 shown in Figs. 7-10), *i.e.*, a medial flange spaced-apart from a lateral flange, with at least one substantially horizontal foot-supporting portion (such as platforms 3, 4 shown in Figs. 1-3, or platform 13 shown in Figs. 4-6) from which the flanges extend downwardly. (Specification, page 5, lines 17-25; page 11, lines 6, 7; page 11, lines 18-20.)

Further, at least one of the flanges includes an intermediate portion (*i.e.*, intermediate between top and bottom) having been made by pressing (such as rib 8 (Fig. 1), rib 18 and/or 19 (Figs. 4, 6), rib 27, 28, and/or 29 (Figs. 7, 8, 10, *etc.*)) so that the intermediate portion(s) is(are) substantially non-coplanar with the bottom portion of the flange(s). (Specification, page 6, lines 11-13; page 11, lines 12-17; page 12, lines 1-11.)

Rigidifying the frame of the skate of the invention by means of having one or more stiffening ribs having been made by pressing enables the invention to achieve, with regard to a frame of equal weight made merely by bending according to the above-mentioned prior art constructional technique, a substantial increase in rigidity and resistance to deformation due to the presence of such ribs as well as due to the localized work hardening of the material in the area of such ribs related to the pressing of such material. (Specification, page 7, lines 20-25.)

Further, and importantly as mentioned above, the increased rigidity is realized in a skate frame that is manufactured with a technique that results in cost savings over prior art frames that rely, for the purpose of providing frame rigidity, on techniques that are well-known to those skilled in the art to be more expensive, particularly extrusion and machining, as taught by MYERS, for example.

**F. ISSUE ON APPEAL****Whether the Invention Recited in Claims 7-12 and 28-30 is Patentable Over the Combination of MYERS and MacDONNELL****G. GROUPING OF CLAIMS**

For the purpose of this appeal only, claims 7, 8, and 28 stand or fall together and claims 9, 10, 12, 29, and 30 stand or fall together.

Consistent therewith, Appellant presents separate arguments below for the following three groups of claims: (1) claims 7, 8, and 28; (2) claims 9, 10, 12, 29, and 30; and (3) claim 11.

**H. ARGUMENT****Claims 7-12 and 28-30 Patentably Define Appellant's Invention; the Rejection Based Upon MYERS and MacDONNELL Should be Reversed**

Appellant requests that the rejection of claims 7-12 and 28-30, based upon the combination of MYERS and MacDONNELL, be reversed at least for the following reasons.

1. **The Rejection is Based Upon Appellant's Disclosure and Not Upon What is Suggested by MYERS and MacDONNELL**

The rejection is supported by the following statement, appearing near the middle of page 3 of the final Office action:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the chassis of Myers et al. with the improvement of the intermediate portion having been made by pressing, substantially non-coplanar with the bottom portion as taught by MacDonnell in order to have attractive appearance peculiar to the chassis.

Appellant very respectfully submits that the above-quoted rationalization for the rejection, *i.e.*, for the hypothetical modification of a skate disclosed by MYERS by means of the teachings of the ice skate disclosed by MacDONNELL, merely represents a classic case of a hindsight reconstruction of the claimed invention made for the purpose of rejecting Appellant's claims and not based upon that which would have been obvious to one skilled in the art.

First, Appellant submits that there is no evidence that modifying an intermediate portion of MYERS' skate by providing a non-coplanar pressed portion would have resulted in an appearance that is more attractive than would otherwise be the case.

The mention in MacDONNELL of his ice skate having an attractive appearance (see lines 89-94 on the single page of specification) is the following: "the skate has the attractive appearance peculiar to skates of the tubular type", whatever that means. Appellant submits that the skate of MYERS would not appear to be a skate of the "tubular type" and, further, Appellant submits that modifying MYERS' skate so that it would resemble an attractive tubular type of skate would appear to necessitate the lateral and medial flanges being brought together, as MacDONNELL teaches so that the tubular shapes of elements 7, 8, 9, and 10 would be created. However, such modification would be contrary to all but the ice skate embodiment of MYERS (see Figs. 10a, 10b of MYERS) and, further, such modification would no longer result in flanges that are "spaced apart" as required by Appellant's claims.

Second, Appellant submits that if MYERS were interested, in a more general sense in making the chassis of his skate more attractive (inasmuch as the nature of the attractiveness cited in the rejection is not more specifically described), there would be less expensive and likely more effective alternatives. For example, for enhancing the appearance of the frame, MYERS could rely upon the application of paint and/or decals.

Further in this regard, and related to the discussion below regarding differences between manufacturing a product by extrusion and manufacturing a product by pressing, Appellant submits that MYERS could rely upon the machining steps that are necessary to complete the manufacture of the product to enhance the appearance of chassis/frame, rather than to introduce a constructional technique that is not even necessitated by MYERS. Obviously, an added cost would be realized if a pressing technique were to be added to the MYERS disclosure.

Still further, the suggestion inherent in the rejection that one skilled in the art would have provided a non-planar portion made by pressing of an extruded part is not taught or suggested, *i.e.*, there is no support provided in the rejection for this possibility. Further, Appellant submits that this added manufacturing constructional technique to the skate of MYERS, and supposedly only for the purpose of enhancing the appearance of the MYERS' skate, would be understood by those skilled in the art to be detrimental to the integrity of the frame/chassis of MYERS' skate inasmuch as those skilled in the art of manufacturing techniques such as extrusion and stamping/pressing, *e.g.*, would recognize that pressing an extruded article would risk initiating cracking of the article, somewhat akin to cracking in an article made by casting.

The use of hindsight knowledge to support a rejection under 35 U.S.C. §103 is, of course, impermissible. *See, e.g. W.L. Gore and Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

As explained by the Federal Circuit in *Ecolchem Inc. v. Southern California Edison*, 56 USPQ2d 1065, 1075 (Fed. Cir. 2000):

We have previously held that "[t]he suggestion to combine may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1555, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). However, there still must be evidence that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed."

In the instant case, the evidence shows that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention", did not provide for the construction of an in-line skate, which includes a pair of spaced-apart flanges for accommodating wheels, and wherein the flange(s) include(s) an intermediate portion having been made by pressing, non-coplanar with the bottom portion(s) of the flange(s).

In MacDONNELL, although each of the sections 4, 5 includes a part of a tubular section 10, which is offset from the remainder of the plane of its respective section, the purpose of such parts is to form the tubular section. *When applied to the frame/chassis of MYERS, there would be no opportunity to create such tubular section inasmuch as the flanges of MYERS' skate are*



*spaced apart.* Thus, Appellant submits that the rejection relies upon the dissecting of MacDONNELL's disclosure into a component that is not even overtly taught. One skilled in the art would certainly have not have been made aware of the possibility, *i.e.*, any likelihood or suggestion, that MacDONNELL's disclosure could be modified and then, as modified, applied to a skate that itself is to be manufactured by means of different techniques. It is only Appellant's invention which has motivated the examiner to have considered such modification.

The Federal Circuit has also commented, in *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999):

Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. [Citation omitted].

\* \* \*

Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom of the field.

In the instant case, if one were to "cast the mind back to the time of the invention ... to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom of the field", one would have the knowledge of the prior art described by Appellant in the background section of his specification, as well as the disclosures of MYERS and MacDONNELL, for example. Further, the only teaching of a portion of a skate

frame having a pressed portion that is non-coplanar with another portion is that provided by MacDONNELL. And, as explained above, MacDONNELL fails to teach or suggest such pressed portion in a frame that includes flanges that are spaced apart to accommodate wheels of an in-line skate. Instead, MacDONNELL's pressed portions 10 are made by two separate parts of a frame whereby the two parts are brought together in an abutting relationship, and whereby they are brought together only for the purpose of creating *tubular portions* 7, 8, 9, and 10.

In *Ex parte Clapp*, 227 USPQ 972 (B.P.A.I. 1985) the Board stated that to support a conclusion of obviousness under 35 U.S.C. §103:

either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

*Id.*, at 973. See also, *In re Laskowski*, 10 USPQ 2d 1397 (Fed. Cir. 1989), and *Ex parte Petersen*, 228 USPQ 217 (B.P.A.I. 1985).

Further, as stated in *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984):

[t]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.

In this regard, Appellant submits that the prior art of MacDONNELL does not suggest the desirability of the modification of MYERS' skate inasmuch as, as mentioned above,

MYERS' skate frame is a type in which the flanges are spaced apart, whereas MacDONNELL's frame is a type in which the flanges must abut. There is no teaching or suggestion for non-planar portions of spaced-apart frame flanges having been made by pressing; there is no teaching or suggestion that such pressed portions would provide the necessary strength, *e.g.*, in spaced-apart flanges, *without the creation of the aforementioned tubular portions 7, 8, 9, and 10 of MacDONNELL.*

At least for the reasons given above, Appellant requests that the rejection of claims 7-12 and 28-30 be reversed.

**2. The Combination of MYERS and MacDONNELL Would Not Have Been Obvious to One Skilled in the Art**

As mentioned above, the rejection is supported by the following statement:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the chassis of Myers et al. with the improvement of the intermediate portion having been made by pressing, substantially non-coplanar with the bottom portion as taught by MacDonnell in order to have attractive appearance peculiar to the chassis.

Additional to the reasons given above for the reversal of the rejection of claims 7-12 and 28-30, Appellant requests that the rejection, as it applies to the following particular three groups of claims, be reversed: (1) claims 9, 10, 12, 29, and 30; (2) claim 11; and (3) claims 7, 8, and 28.

a. Claims 9, 10, 12, 29, and 30

In independent claim 12, Appellant describes the in-line skate of his invention to include, *inter alia*, medial and lateral flanges, each such flange including respective top, bottom and intermediate portions, whereby at least the intermediate portion of the lateral flange (*i.e.*, the flange on the outer side of the foot), having been made by pressing, is substantially non-coplanar with the bottom portion of the lateral flange, and whereby the intermediate portion of the lateral flange is spaced apart from the intermediate portion of the medial flange by a distance (a "second" distance) which is different from the distance that the bottom portions of the lateral and medial flanges are spaced apart.

In independent claim 9, Appellant describes the intermediate portions of both lateral and medial flanges to have been made by pressing.

The frame (*i.e.*, "chassis") of MYERS is not made by pressing. Instead, it is made by extrusion. (The comment at the top of page 3 of the final Office action that the bowed portion 32 of MYERS is made by pressing is believed to be an inadvertent error.)

It is the intention of MYERS that the body of his chassis have a *substantially constant transverse cross section along its length* (see column 3, lines 1-3 and column 4, lines 16-17), *i.e.*, thereby enabling the chassis to be manufactured by an extrusion process, thereby resulting in a frame that is typically stronger than a frame made by the other two known construction techniques described in Appellant's specification.

In contrast, the frame of MacDONNELL, intended to be used with ice skates rather than in-line skates, is made with *punches and dies*. See, *e.g.*, the left column, lines 31-34 of MacDONNELL.

In fact, it is quite important for adjustability feature of MYERS' frame that the frame include the so-called "interlocking channel system (ICS)" initially summarized at column 2, lines 36-60 and additionally described at column 5, lines 7-65.

This ICS system employs raised ribs 30 (or rib portions 30a, 30b) which extend along the upper extent of the exterior surface 28 of the side walls 25, 26 of the body 10 of the chassis/frame 3. The ribs on the frame (see Figs. 2 and 3, for example) interact with channels 50, 69 of heel and toe boot supporting members 12 and 14, respectively (see Figs. 4, 5a, 5b, 6, and 7, for example, and column 8, lines 1-11) so that such boot support members 12, 14 can slide along the ribs 30 of the ICS to thereby provide the adjustability necessary in the MYERS skate.

MYERS explains that the ribs are straight and define a cross-sectional shape that remains constant along the length dimension of the body 10 of the chassis/frame 3. See column 5, lines 28-43. Further, beginning at column 5, line 44, MYERS explains that extrusion is "highly efficient and cost effective" for articles that have constant cross-sectional dimensions such as that of the body 10 of the chassis/frame 3.

Appellant notes that MYERS includes the self-serving sentence in lines 62-65 of column 5 that "further embodiments may be formed by other suitable manufacturing processes, including, but not limited to molding, casting, stamping and the like."

This passage of MYERS does *not* purport that the *embodiment of MYERS' skate with the aforementioned ICS feature* can be formed by a technique other than extrusion. Instead, this passage refers to "further embodiments." MYERS only describes the extrusion technique as being used for manufacturing a frame having the necessary straight, precisely formed ribs 30, 30a, 30b for sliding cooperation with the channels 50, 69 of the boot support members 12, 14.

As stated in *In re Donohue*, 226 USPQ 619, 621 (Fed. Cir. 1985):

It is well settled that prior art under 35 U.S.C. §102(b) must sufficiently describe the claimed invention to have placed the public in possession of it.

On page 3, lines 12-14 of Appellant's specification, he cites the insufficient precision provided by the molding technique in the field of endeavor to which the invention relates. Similarly, Appellant submits that it would be apparent to those skilled in the art, as well as to those not even skilled in the art, that stamping or pressing a metallic object, *i.e.*, so as to deform it, cannot be relied upon to create ribs like those disclosed by MYERS for sliding cooperation with channels of boot-supporting members.

Therefore, Applicant submits that the hypothetical modification of the frame of MYERS, whereby a pressing technique would be employed rather than, or in addition to, extrusion, would not have been obvious to one skilled in the art.

It is known in the art that extrusion can be used to maintain close tolerances for articles having a constant cross section. The use of a molding technique, *e.g.*, to make a skate frame would require the resolution of problems, such as deformation, when the article is removed from the mold or when the article is further machined.

Similarly, manufacturing a skate frame by pressing also presents problems that would not render the modification of the extrusion process of MYERS obvious. In particular, Appellant submits that ribs and grooves having the close fitting and slight transverse dimensions of the ribs 30 in the toe and heel portions of the frame of MYERS could not be made by pressing.

Although MYERS mentions that "further embodiments may be formed by other suitable manufacturing processes, including, but not limited to molding, casting, stamping or the like" (column 5, lines 63-65). However, MYERS certainly fails to describe how the embodiment illustrated in his drawings and described in detail could be made by a process other than extrusion and no other teaching or suggestion is provided as to how the ribs 30 and grooves 50, 69 of MYERS could be made.

Still further, as mentioned above in connection with Appellant's contention that the rejection is based only upon Appellant's disclosure, the two parts 4, 5 of MacDONNELL's ice-skate frame are brought together to form tubular parts (thereby simulating "tubular type" skates). Note, *e.g.*, the generally horizontal tubular section 10 (Fig. 10) and the generally vertical tubular section 9 (Fig. 9), as well as the generally vertical "posts" 7, 8.

Therefore, even if one were to find that one skilled in the art would have contemplated relying upon a pressing technique in manufacturing MYERS' skate chassis/frame, Appellant submits that the teachings of MacDONNELL would not have led the skilled artisan to form Appellant's claimed non-planar intermediate flange portions by having them formed by pressing.

*There is no teaching or suggestion in either MacDONNELL or MYERS to provide for spaced apart flanges having non-planar intermediate portions, in which such intermediate portions are spaced apart.*

MYERS does in fact mention an embodiment (see Figs. 10a, 10b) that is arguably more relevant to MacDONNELL's disclosure than the embodiments elsewhere in MYERS specification, including the embodiment relied upon in the rejection to which Appellant is herein appealing.

More particularly, in this regard, MYERS' embodiment of Figs. 10a, 10b is directed to an ice skate (as mentioned above, MacDONNELL's disclosure also directed to an ice skate). In the ice skate frame of Figs. 10a, 10b, an intermediate portion of the chassis/frame 3' is shown as a single member (*i.e.*, in the cross-sectional view of Fig. 10b, note the intermediate portion above the blade 4').

In fact, in MYERS' ice skate embodiment, the bowed section 32 is omitted.

Further to the foregoing reasons for reversal, Appellant submits that one skilled in the art would not have considered modifying the already time-intensive constructional techniques necessary to manufacture an extruded and machined frame as disclosed by MYERS by adding a punching/pressing constructional technique.

As mentioned above, in contrast to the extrusion technique employed by MYERS, the frame of MacDONNELL is made with punches and dies. A longitudinally extending tubular section 10 is made by abutting and welding together the frame side sections 4, 5, which thereby provide a groove in the lower edge to receive a runner 6. See the left column, lines 48-55. An objective of MacDONNELL is to produce a strong frame (made of steel or a light weight alloy, as mentioned in the left column, lines 38-44), but one that is light in weight. The creation of tubular members 7, 8, 9, and 10, however, are part of MacDONNELL's teaching in achieving a strong frame.



Persons skilled in the art would not employ a pressing technique in a frame that is initially made by extrusion and then completed with machining/milling to remove portions of the extruded material. Once the extruded profile has been made, there is no flat sheet to press.

In addition, by means of the extrusion technique those skilled in the art would recognize that the frame is already inherently relatively strong, so that any pressing thereof would be unnecessary. That is, Appellant submits that further pressing of an extruded profile would not be found to strengthen the extruded profile beyond that which had been, or could have been, achieved by extrusion. Thus, complicating the constructional technique by adding pressing of the frame would only add cost without an added benefit. Further, as mentioned above, those skilled in the art of manufacturing techniques such as extrusion and stamping/pressing, *e.g.*, would recognize that pressing an extruded article would risk initiating cracking of the article, somewhat akin to cracking in an article made by casting.

As explained on page 2100-125 of the MPEP, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)."

At least in view of the foregoing, Applicant requests that the rejection of claims 9, 10, 12, 29, and 30, based upon the combination of MYERS and MacDONNELL be withdrawn.

**b. Claim 11**

Dependent claim 11 includes all the limitations of parent claim 9 and, therefore, Appellant requests that the rejection of claim 11 be reversed for the reasons given above.

In addition, claim 11 includes the limitation that "said lateral intermediate portion has a longitudinally curved contour."

This limitation encompasses, *e.g.*, the embodiments described on page 12, lines 8-11 of Appellant's specification (shown in Figs. 1-10), as follows: "Each of the ribs 8, 18, and 28 of the examples of the invention described above extends longitudinally at a variable height relative to a line that connects the opposite ends of the ribs." That is, "extending longitudinally at a variable height ...", particularly coupled with the drawings (see, *e.g.*, 1, 4, and 7), supports the limitation recited in claim 11.

Because claim 11 calls for the intermediate portion to be longitudinally curved, Appellant submits that claim 11 specifies a shape distinctly different from that of the bowed portion 32 of MYERS. Clearly, such shape cannot be made via the extrusion technique disclosed by MYERS.

Further, pressing a longitudinally curved intermediate section into a flange of MYERS's frame would not have been obvious to one skilled in the art. First, in this regard, the front end of the tubular part 10 of MacDONNELL's frame is curved upwardly. No particular reason is given for the curvature, although it would appear to be made for the purpose of corresponding to the upward curvature of the front of the ice skate blade. Of course, MYERS discloses a straight frame, resulting from an extrusion technique. There would appear to be no reason and no advantage in providing a longitudinally curved intermediate frame section in MYERS' frame.

Further, the limitation of Appellant's claim 11 is somewhat similar to the limitation appearing in Appellant's *allowed* claim 15 of a rib that extends longitudinally other than in a straight line.

For this additional reason, Appellant requests that the rejection of claim 11 be reversed.

c. Claims 7, 8, and 28

Independent claim 7 includes limitations corresponding to those appearing in independent claim 9 and, therefore, for reasons mentioned in connection with claim 9, Appellant submits that the rejection of claim 7, and the claims depending therefrom, should be reversed.

These limitations include medial and lateral flanges having top and bottom portions that are spaced apart by a given distance and respective intermediate portions, made by pressing, being non-coplanar with the bottom portions, spaced apart by a different distance.

In addition, claim 7 specifies that the flanges are made of metal, at least partially including aluminum.

As explained, *e.g.*, on page 7, lines 20-24 of Appellant's specification, the strength of the flanges (*i.e.*, resistance to deformation in vertical and longitudinal directions), when a rib (*i.e.*, non-planar portion) is increased by means of local work-hardening of the metal that is created from the rib having been made by the pressing technique.

This feature is not appreciated by MYERS or MacDONNELL and, further, as Appellant mentioned above, those skilled in the art would recognize that attempting to apply a pressing technique to an extruded form would be detrimental to the integrity of such form (*i.e.*, such frame/chassis). The possibility of enhancing the strength of the flanges through work-hardening would not have been achieved.

Further, providing for an intermediate portion in the flange of the MYERS skate, having been made by pressing, would increase manufacturing costs which would appear to be outweighed by any possibility of an increase in strength of the resulting frame, particularly inasmuch as an extruded frame, such as that of MYERS, is known to provide for a stronger

frame that one made by the punch and die techniques disclosed by MacDONNELL.

For this additional reason, therefore, Appellant requests that the rejection of claims 7, 8, and 28 be reversed.

## I. CONCLUSION


For the reasons advanced above, Appellant submits that the sole rejection from which Appellant appeals is erroneous and should be reversed.

This appeal brief is being submitted in triplicate, pursuant to 37 CFR §1.192(a).

A check is enclosed in the amount of \$430.00 for payment of the fee for filing an appeal brief, as set forth in 37 CFR §1.17(c), and for payment of the fee for a request for an extension of time, under 37 CFR §1.136(a), for one-month. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any additional fee, or to credit any overpayment, to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone number given below.

Respectfully submitted,  
Louis BENOIT

  
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